

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ELISABETH LANKARD**

Claimant

VS.

## AMOCO FOOD SHOP

Respondent

AND

STATE FARM INSURANCE COMPANY and

LIBERTY MUTUAL INSURANCE COMPANY

## Insurance Carriers

Docket No. 1,012,663

## ORDER

Respondent and its insurance carrier, Liberty Mutual Insurance Company (Liberty), appeal the preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh dated December 8, 2004. Claimant was awarded benefits in the form of medical treatment after the Administrative Law Judge (ALJ) determined claimant's date of accident would be her last day worked with respondent, citing *Berry*.<sup>1</sup>

## ISSUES

1. Did the ALJ exceed his jurisdiction in finding an accident date of March 23, 2004?
2. Did the ALJ exceed his jurisdiction in ordering specific medical care with Daniel D. Schaper, M.D.?
3. Did claimant suffer an accidental injury within the course and scope of her employment with respondent?

<sup>1</sup> *Berry v. Boeing Military Airplanes*, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that this matter should be dismissed and the Order of the Administrative Law Judge should remain in full force and effect.

With regard to whether claimant suffered accidental injury arising out of and in the course of her employment, the Board finds that its jurisdiction is limited to reviewing questions of law and fact as presented to and determined by the ALJ.<sup>2</sup> In this instance, the issue of whether claimant suffered accidental injury arising out of and in the course of her employment was not raised before the ALJ. The attorney for respondent and Liberty stated at the preliminary hearing that having been only recently brought into the action, he planned to provide no "conflicting medical opinion today on causation."<sup>3</sup>

With regard to claimant's entitlement to medical care, K.S.A. 44-534a and K.S.A. 2003 Supp. 44-551 limit the rights of the parties to appeal from preliminary hearings to certain jurisdictional issues which include whether the employee suffered accidental injury, whether the injury arose out of and in the course of employment, whether notice is given or claim timely made, or whether certain defenses apply. Claimant's entitlement to medical care is not an issue over which the Board takes jurisdiction from an appeal of a preliminary hearing.

Finally, with regard to the appropriate date of accident, that issue involves a coverage dispute between two insurance carriers. As counsel for respondent and Liberty knows, the Board has repeatedly held that issues involving the date of accident and coverage disputes between insurance carriers, as to which is to pay the cost of preliminary benefits for the same employer, are not jurisdictional.<sup>4</sup>

The Board finds that this matter should be dismissed and the Order of the ALJ remains in full force and effect.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh dated December 8, 2004, remains in full force and effect and the appeal of respondent and its

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<sup>2</sup> K.S.A. 44-555c(a).

<sup>3</sup> P.H. Trans. at 5.

<sup>4</sup> *Groth v. K. L. Johnson Trucking, Inc., and United Agri Products-Pueblo*, No. 1,013,431, 2004 WL 1778913 (Kan. WCAB July 16, 2004); *Ireland v. Ireland Court Reporting*, Nos. 176,441 and 234,974, 1999 WL 123220 (Kan. WCAB Feb. 22, 1999).

insurance carrier, Liberty Mutual Insurance Company, in the above matter should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2005.

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BOARD MEMBER

c:     Derek R. Chappell, Attorney for Claimant  
       Denise E. Tomasic, Attorney for Respondent and its Insurance Carrier (State Farm)  
       James K. Blickhan, Attorney for Respondent and its Insurance Carrier (Liberty)  
       Kenneth J. Hursh, Administrative Law Judge  
       Paula S. Greathouse, Workers Compensation Director